



COURT OF APPEALS OF INDIANA
ORAL ARGUMENT AT A GLANCE
IU SCHOOL OF LAW—INDIANAPOLIS
WYNNE MOOT COURTROOM

RICHARD BARNES V. STATE OF INDIANA

CRIMINAL LAW ISSUE:

Today the court will hear arguments regarding whether sufficient evidence supports Richard Barnes's conviction for battery on a police officer, resisting law enforcement, and disorderly conduct. Also, whether the trial court abused its discretion when it refused Barnes's tendered jury instruction concerning resisting unlawful entry.

ORAL ARGUMENT:

Tuesday, March 23, 2010
5:00 p.m.
20 minutes each side

APPEAL FROM:

Vanderburgh Superior Court,
The Honorable
Mary Margaret Lloyd, Judge

CASE SYNOPSIS

Facts and Procedural History

On November 18, 2007, Richard Barnes and his wife, Mary, were arguing while Barnes was moving out of their apartment. During the argument, Mary tried to call her sister, but Barnes grabbed the phone and threw it against the wall. Mary then used her cell phone to call 911. Mary told the dispatcher that Barnes was throwing things around the apartment but stated that Barnes had not struck her.

Officer Lenny Reed responded to the 911 dispatch. When the officer arrived at the apartment building, he observed Barnes walking out of the apartment. Barnes was carrying a black bag. Officer Reed told Barnes that he was investigating a 911 call. Barnes stated that the officer was not needed,

and that the officer should leave because Barnes was leaving. Because Barnes was yelling at the officer, Officer Reed told Barnes that he was going to arrest him for disorderly conduct if Barnes did not calm down. The officer noticed that people near the apartment building were staring at Barnes and the officer.

During this discussion, Mary walked out of the apartment carrying another duffel bag. She threw the bag down on the ground and told Barnes to take the rest of his things. Mary then walked back into the apartment followed by Barnes, Officer Reed, and another officer who had arrived on the scene. When they reached the doorway of the apartment, Barnes told the officers that they could not enter. Officer Reed explained they needed to

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come in to investigate the 911 call. Barnes continued to deny the officers entry. During their argument, Mary told Barnes to “just let them in.”

Officer Reed attempted to walk past Barnes to enter the apartment, and Barnes shoved the officer into the hallway. Officer Reed and Barnes continued to struggle and eventually the other officer on the scene grabbed Barnes in a vascular neck restraint and took Barnes to the ground. Barnes continued to struggle, and a taser was used to subdue Barnes. Barnes suffered an adverse reaction to the taser and was transported to the hospital.

On December 4, 2007, Barnes was charged with Class A misdemeanor battery, Class A misdemeanor resisting law enforcement, Class B misdemeanor disorderly conduct, and Class A misdemeanor interference with the reporting of a crime. A jury trial commenced on June 25, 2009. Prior to the start of trial, Barnes tendered a jury instruction concerning the right of a citizen to reasonably resist unlawful entry into a citizen’s home. The trial court refused to give the instruction.

At the close of the State’s evidence, the trial court granted Barnes’s motion for a directed verdict on the interference with the reporting of a crime charge. However, the jury found Barnes guilty of the remaining charges. The trial court ordered Barnes to serve a suspended sentence of 180 days for each conviction to be served concurrently. Barnes now appeals.

Arguments

First, Barnes argues that there is insufficient evidence to support his convictions for battery, resisting law enforcement, and disorderly conduct. Barnes claims that the evidence is insufficient to support his battery and resisting law enforcement convictions because the officers did not have probable

cause to arrest him. Therefore, Barnes had the right to reasonably resist the unlawful entry of a police officer into his home. The State argues that the evidence was sufficient to support the convictions because, while a citizen may use force to resist an unlawful entry into his home, a citizen is still not permitted to commit battery against a police officer. Further, the State argues that Mary gave the officers permission to enter the apartment when she told Barnes to “just let them in.”

Concerning his disorderly conduct conviction, Barnes argues that his speech was political, which is speech protected by Article 1, Section 9 of the Indiana Constitution. Because his speech was political, Barnes argues that the State was required, but failed to demonstrate, that the State did not materially burden Barnes’s opportunity to engage in political speech. The State concedes that Barnes’s speech was political, but argues the volume of Barnes’s speech disrupted nearby residents and children playing outside. The State contends that this evidence is sufficient to demonstrate that Barnes abused his right of free speech.

Barnes also argues that the trial court abused its discretion when it refused his tendered jury instruction concerning unlawful entry into a citizen’s home. Barnes argues that the instruction was improperly refused because it was central to his theory of the case. In response, the State argues that the tendered instruction was an incomplete statement of the law, and the instruction would have misled the jury to believe that battery of a police officer constitutes reasonable resistance, which is contrary to the law of the State of Indiana.

TODAY'S PANEL OF JUDGES

HON. PAUL D. MATHIAS (ALLEN COUNTY), PRESIDING Judge of the Court of Appeals since March 2000

Paul D. Mathias was appointed to the Indiana Court of Appeals for the Third District in March, 2000. Prior to his appointment, he served as a judge of the Allen Superior Court – Civil Division in Fort Wayne for eleven years and before that as the referee of its Small Claims Division for four years.

Judge Mathias was born in LaGrange, Indiana, and grew up in the Fort Wayne area. He graduated with honors from Harvard University in 1976 and from the Indiana University School of Law in Bloomington in 1979, where he was a member of the moot court team. Until his appointment as small claims court referee he practiced law for six years in a medium-sized Fort Wayne law firm, concentrating in construction law, personal injury, domestic relations, and appellate practice.

Like all judges on the Court of Appeals, Judge Mathias writes over 150 opinions each year and votes on more than 300 opinions written by his fellow judges. Off the bench, he also maintains a keen interest in civic education. Judge Mathias is especially proud of his deep and long-standing commitments to the *We The People* program, which is the civics education program sponsored by the Indiana

Bar Foundation, Indiana State Bar Association, and the Indiana Judges Association, and to the Indiana Judges Association itself, which he has served as President and for which he continues to serve as a legislative liaison to the General Assembly. He is also an active member of national, state, and local bar associations.

Judge Mathias has been honored to receive the Centennial Service Award from the Indiana State Bar Association, “[i]n recognition of the Indiana bar and judiciary, living and deceased, who have provided outstanding leadership and service to the public and the profession,” and a Sagamore of the Wabash award from Governors O’Bannon and Kernan.

Judge Mathias and his wife, Carlabeth, have been married thirty-three years and are the proud parents of two sons, Ethan and Corbin. Carlabeth is a child and family counselor in Hamilton County. They enjoy travel, music, theater, and doing just about anything together as a family.

TODAY'S PANEL OF JUDGES

HON. TERRY A. CRONE (ST. JOSEPH COUNTY) Judge of the Court of Appeals since March 2004

Terry A. Crone was appointed to the Court of Appeals March 8, 2004, representing the Third District. Judge Crone was raised in South Bend. He graduated cum laude from DePauw University in 1974 and from the University of Notre Dame Law School in 1977.

Judge Crone practiced law in South Bend for nine years concentrating in areas of civil practice and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, Judge Crone was appointed Magistrate of the St. Joseph Circuit Court where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989.

Judge Crone is a past President of the St. Joseph Bar Association. He is also a former member of the Board of Managers of the Indiana Judge's Association, the Supreme Court Committee on Character and Fitness, and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference. Judge Crone is currently a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations, the American Judicature Society, and the Phi Delta Phi Honorary Legal Society. Judge Crone previously served as Chairman of the Indianapolis Bar

Association Bar Leader Series.

Judge Crone is a frequent speaker at legal education programs. He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs. Judge Crone was retained on the Court by election in 2006. He is married and has three daughters.

For More Information on the Court of Appeals, please visit our website:
<http://www.in.gov/judiciary/appeals/>

TODAY'S PANEL OF JUDGES

HON. ELAINE B. BROWN (DUBOIS COUNTY) **Judge of the Court of Appeals since May 2008**

Elaine B. Brown was appointed to the Court of Appeals by Gov. Mitch Daniels and took her seat on May 5, 2008. A Dubois County native, she is the mother of two adult children.

Before joining the Court of Appeals, Judge Brown was a trial court judge for over 15 years as well as an attorney in private practice for 11 years. She served as judge of the Dubois Superior Court from 1987 to 1998 and from 2005 to May, 2008. In the years between her tenure on the bench, she maintained a solo practice in Jasper and was a senior attorney with Fine & Hatfield in Evansville. Earlier in the 1980s, she practiced law with the firm of Thom & DeMotte in Jasper.

Judge Brown earned a bachelors degree with distinction from Indiana University in 1976, and her J.D. from the IU School of Law in Bloomington in 1982. She was a teacher in the Jasper School Corporation for three years before entering law school.

A large part of Judge Brown's professional focus during her years on the bench has addressed substance abuse issues. In 2007, she initiated a new countywide alcohol and drug program, similar to the Dubois Court Alcohol and Drug Services Program of which she was President from 1987 to 1992. From 2006 until her elevation to the Court of Appeals, she served as President of the Dubois County Substance Abuse Council. In 2005, she created the county's Drug Court. In the 1990s, she served on the Executive Board of the Dubois County Substance Abuse Task Force, Committee for a Drug Free Jasper, and the county's Suicide Prevention Committee.

Since 1998, Judge Brown has been an Indiana Registered Civil Mediator. She graduated from the Indiana Judicial College in 1996 and served on the Board of Directors of the

Indiana Judicial Conference and on the Board of Managers of the Indiana Judges Association. She is a former member of the Indiana Supreme Court Character and Fitness Committee as well as the Judicial Administration Committee of the Indiana Judicial Conference, and is a Fellow of the American Bar Foundation.

Judge Brown was a Leader in the Brooks Inn of Court in Evansville and a Benchner in the Sagamore Inn of Court in Indianapolis. She was an officer for four years of the Dubois County Bar Association, serving as President in 1985. She holds or has held memberships in the American Trial Lawyers Association, the National Association of Women Judges, the American Judges Association, the American Judicature Society, and the American, Indiana, Dubois County, Evansville, and Indianapolis bar associations. She served on the Family Law Study Committee of the Evansville Bar Association and currently serves on the Judicial System Improvement Committee and the Attorney Fee Dispute Resolution Committee of the Indiana State Bar Association, and on the Alternative Dispute Committee of the Indiana Judicial Conference.

Her various community activities include the Scott School Improvement Committee and the North High School PTSA Executive Board. She supported the Restore Old Jasper Action Committee, the Dubois County Museum, is a life member of the Ferdinand Community Center, and a member of the American Legion Auxiliary and the St. Thomas Moore Society. A 1993 graduate of the Richard G. Lugar Excellence in Public Service Series, she served on that organization's Board of Governors from 1993 to 1998. In 1992, Judge Brown received the Outstanding Young Hoosier Award from the Indiana Jaycees, one year after the Jaycees presented her with its Distinguished Service Award.

*Richard Barnes v. State of Indiana***ATTORNEYS FOR THE PARTIES****For Appellant, Richard Barnes:**

Erin L. Berger
Vanderburgh County Public Defender Agency
Evansville



Erin Berger was born and raised in Evansville, Indiana. She attended Indiana University School of Law in Bloomington, Indiana and graduated cum laude in 2000. After graduation, she joined Bamberger, Foreman, Oswald, and Hahn, LLP. Ms. Berger has also worked as an associate with VanStone & Kornblum. She has been a solo practitioner in Evansville, Indiana since January 1, 2005. Ms. Berger currently focuses the majority of her practice as a part-time public defender representing parents in Child in

Need of Services and Termination of Parental Rights cases.

Ms. Berger lives in Evansville with her husband, Jeffrey; three daughters, Madeline, Melanie, and Mallory; and a toy poodle, Molly.

For Appellee, State of Indiana:

Karl Scharnberg
Attorney General's Office
Indianapolis

Karl Scharnberg is from Indianapolis, Indiana. He graduated from Marian College in 2003 with a bachelor's degree in business administration. He obtained his J.D. from Ave Maria School of Law in Ann Arbor, Michigan in 2007. Mr. Scharnberg was admitted to the Indiana bar the following October and was employed by the Indiana Attorney General's office as a deputy shortly thereafter.

Mr. Scharnberg is a member of the Criminal Appeals Section of the Attorney General's appellate division. He represents the State of Indiana in non-capital criminal appeals and post-conviction proceedings. This is his fourth oral argument before the Court of Appeals.